

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 2272 of 2000

WITH

FIRST APPEAL No 2273 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE M.R.CALLA

and

Hon'ble MR.JUSTICE D.A.MEHTA

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1. Whether Reporters of Local Papers may be allowed : NO
to see the judgements?
2. To be referred to the Reporter or not? : NO
3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge? : NO

UNITED INDIA INSURANCE CO LTD.

Versus

DEEPAL GIRISHBHAI SONI

Appearance:

MR AJAY R.MEHTA FOR MR RAJNI H MEHTA for Appellants.

MR PARCY KAVINA FOR M/S THAKKAR ASSOC. for Respondent No. 1

CORAM : MR.JUSTICE M.R.CALLA

and

MR.JUSTICE D.A.MEHTA

Date of decision: 09/11/2000

COMMON JUDGEMENT

(Per : MR.JUSTICE M.R.CALLA)

#. Heard learned Counsel.

#. At the very outset the learned Counsel for the appellant sought leave to delete the respondents no. 6, 7 and 8. Leave is granted. Accordingly, the respondents no. 6, 7 and 8 stand deleted from the array of the respondents in these appeals.

#. Admit. Issue Notice. Mr.Parcy Kavina, appearing for respondents no. 1 to 5 accepts notices and waives the service on behalf of the respondents no. 1 to 5. On the request of both the sides and in the facts and circumstances of these cases, the appeals are taken up for final disposal right today.

#. In an accident which took place on 4th September,1998 between the vehicles i.e. Truck owned by Akbarbhai Bhikhabhai Ajmera insured with National Insurance Company Limited and the vehicle i.e.Tempo tracts owned by Purankumar Popandas Bhatia insured with the present appellant - United India Insurance Co.Ltd. the parents i.e. father and mother of the five respondents had died. Therefore, a Motor Accident Claim Petition No.2133 of 1998 was filed claiming the compensation for the death of the mother i.e. Prabhaben and another Motor Accident Claim Petition No. 2134 of 1998 was filed before the Motor Accident Claims Tribunal claiming compensation for the death of the father viz.Girishbhai Soni. In both these MAC Petitions No.2133 of 1998 and 2134 of 1998 orders were passed below Exh.5 by the Motor Accident Claims Tribunal, Kheda granting interim compensation under Section 163-A of the Motor Vehicles Act,1988 by separate orders in each of the two Motor Accident Claim Petitions on 24.03.2000. In First Appeal No. 2272 of 2000 arising out of the order passed in MAC Petition No.2133 of 1998 i.e. considering the compensation for the death of the mother, the Motor Accident Claims Tribunal has awarded a sum of Rs.04,20,500/- to the claimants with interest at the rate of 12% p.a. from the date of the application till realisation and proportionate costs within one month from the date of the award and the amount of the compensation has been ordered to be apportioned amongst the five claimants equally. In First Appeal No. 2273 of 2000 arising out of the order passed in MAC Petition No.2133 of 1998 i.e. with regard to compensation for the death of the father, the Tribunal has awarded a sum of Rs.11,74,500/- to the claimants with interest at the rate

of 12% p.a. from the date of the application till realisation and proportionate costs within one month from the date of the award and the amount of compensation is to be apportioned amongst the applicants equally. Whereas the orders in both these appeals are sought to be challenged on identical grounds and facts in both the cases are same, we propose to decide these two appeals by this common judgment and order.

#. It may be stated that the main matters under section 166 of the Act are pending before the Motor Accident Claims Tribunal and in these appeals the challenge is only to the compensation awarded under section 163-A of the Act. The learned Counsel for the appellants has submitted that the Tribunal has committed a serious error in awarding interim compensation beyond the scope of section 163-A itself in as much as the amount awarded exceeds the limits indicated in the second schedule. His argument is that the Tribunal could have granted the interim compensation under section 163-A only upto the annual income of Rs.40,000/-. As is the factual position in these matters with regard to the total annual income beyond Rs.40,000/-, that could be taken into consideration only at the time of passing the final order under section 166 and therefore, the interim compensation order as has been passed below Exh.5 in each of these two matters cannot be sustained in the eye of law. The learned Counsel for the appellants has placed reliance on two unreported decisions rendered by Division Bench of this Court in First Appeal No. 2444 of 1997 dated 08.08.2000 (Coram : D.C.Srivastava and H.K.Rathod, JJ) and First Appeal No. 2445 of 1997 with First Appeal No. 3223 of 1997 rendered on 20.06.2000 (Coram : D.C.Srivastava and H.K.Rathod, JJ). In both these unreported decisions, reference has also been made to an earlier decision of this Court rendered by Division Bench (Coram : S.M.Soni and H.R.Shelat, JJ) on 04.08.1998 i.e. R.V.Chudasma Vs. H.V.Kodala reported in 1991(1) G.L.R. P.631. In para 6 of the unreported decision dated 08.08.2000 in First Appeal No. 2444 of 1997, the Division Bench has observed as under :

"We are unable to accept the view that the Tribunal has simply to take guidance from the second schedule and can travel beyond what is contained in the second schedule in suitable cases."

Similarly in the unreported decision in First Appeal No. 2445 of 1997 it was observed by Division

Bench in para 7 as under :

"We are unable to accept the contention of Shri Amin that the Tribunal has simply to take guidance from the second schedule and can travel beyond what is contained in the second schedule in suitable cases."

However, we find that in the earlier reported decision in the case of R.V.Chudasama Vs. H.V.Kodala (supra) in paragraph 46 of the judgment, the similar contention was considered and the Division Bench has observed as under :

"46. An attempt was made by Mr.Pandya to contend that application under Sec.163-A would be limited for the only victims who had income upto Rs.40,000/- per annum are required to go for claim under Sec. 166 of the Act. Mr.Pandya contended that Sec. 163-A is provided for the person having low income with an instant relief. We are not able to agree with this contention for the reason that a statute cannot be interpreted that it may be hit by Art. 14 of the Constitution of India. An instant need not be only for the person with low income upto Rs.40,000/- p.a. Persons with high income may also be equally needy if they lose the bread-winner. Rs.40,000/- per annum comes to Rs.3,500/- and odd per month. In our State and possibly in our country if the interpretation sought by Mr.Pandya is accepted, then, provision of Sec.163-A will not be available to a person belonging to Class II and III of employment also. Some of the Class IV servants may also be deprived of the benefit of Sec.163-A of the Act. Therefore, any interpretation which creates an inequality by creating a class of poor and rich cannot be accepted as it hits the fundamental right of equality before law."

Thus, we find that the view taken in the unreported decisions is not compatible with the view which has been earlier taken in the reported case i.e. R.V.Chudasma Vs. H.V.Kodala (Supra). However, we need not to dilate further on this aspect of the matter for the simple reason that these two appeals can be decided without taking up the exercise of applying these decisions either way in view of the statement made by Mr.Parcy Kavina on behalf of the respondents no. 1 to 5 in each of these two appeals, that the orders of the

interim compensation which are impugned in these appeals may be modified to the extent that the respondents no. 1 to 5, shall get the amount only to the extent permissible under second schedule and that the respondents be paid only that part of the amount awarded which becomes due to them on the basis of the annual income limited upto Rs.40,000/only without prejudice to the rights of the respondents no. 1 to 5 to agitate their full claim at the time when the main Motor Accident Claims Petitions are considered on merits by Motor Accident Claims Tribunal. However, Mr.Parcy Kavina appearing on behalf of respondents no.1 to 5, expressed the apprehension that in case the present appellant challenges this order before the Higher Court, the aforesaid concession may be used against him so as to estop him from contesting the legal position on the basis of which the present appeals have been filed. He submits that his submission with regard to the maintainability of the appeals and that as a question of law , the respondents are entitled to be paid interim compensation under section 163-A even beyond the annual income of Rs.40,000/- should be kept open. We find that this apprehension is wholly unfounded for the simple reason that the only relief which has been claimed in these two appeals is that the respondents are not entitled to any amount more than the one which they may get by taking on the basis of their actual income to the extent of Rs.40,000/- for the purpose of interim compensation under section 163-A. If the relief as prayed for to the limited extent is granted to the appellants in these two appeals, such a contingency as apprehended by Mr.Kavina cannot be conceived and therefore, the apprehension expressed by Mr.Kavina is beyond any prudent comprehension. In any case, the concession made by Mr.Kavina for the purpose of modifying the impugned orders that the respondents be paid by taking the income of Rs.40,000/- p.a. for the purpose of these appeals will not estop the respondents from raising all legal contentions which are available to them at the time when the main Motor Accident Claim Petition is taken up for consideration by the Motor Accident Claims Tribunal and it is made clear that nothing observed or said in this order will come in the way of either of the parties when the main petitions are decided on merits by the Tribunal.

#. We find that on the basis of the agreed position between the parties on this limited aspect of the matter, if we compute the amount of interim compensation in the light of the provisions of section 163-A as indicated in the schedule in the facts of the present case, the amount payable to the respondents no. 1 to 5 comes out to be as

under :

F.A.No. Amount awarded Amount to be
 by the Tribunal.paid on the basis
 of the annual
 income of Rs.
 40,000/-.

2272/2000(Arising Rs.4,20,500/- Rs.3,24,500/-
MACP No.2133/98)

2273/2000(Arising
MACP No.2134/98) Rs.11,74,500/- Rs.3,78,500/-

Accordingly, we modify the impugned orders dated 24.03.2000 passed in each of these two appeals to the extent that the respondents no. 1 to 5 in First Appeal No.2272 of 2000, shall be entitled to get a sum of Rs.3,78,500/- only instead of Rs.4,20,500/- by way of interim compensation and the respondents no. 1 to 5 in First Appeal No. 2273 of 2000, shall get a sum of Rs.3,24,500/- instead of Rs.11,74,500/- by way of interim compensation. It is also observed that as has been agreed between the parties this whole amount as indicated above shall be disbursed to the respondents at this stage itself as per the apportionment ordered by the Tribunal for respective respondents and there is no need to invest 70% of the amount in the fixed deposit etc., as has been ordered by the Tribunal and 100% of this amount i.e. Rs.3,24,500/-in First Appeal No.2272 of 2000 and Rs.3,78,500/- in First Appeal No.2273 of 2000, shall be disbursed to the respondents in each of these two matters respectively. It may also be made very clear that in view of the agreed position between the parties, we have not embarked upon the question of interpreting Section 163-A and the Schedule and without entering into the exercise of interpreting the relevant provisions we have passed this order only because both the sides have shown a good gesture before us. At the time of awarding of compensation under section 166 of the Act all the contentions factual and legal as may be available to the respective parties are open to be agitated when the main petitions are considered by the Tribunal. It goes without saying that the respondents shall not withdraw the claim petitions and would seek decision on merits of the case in both the matters. It is further ordered that a sum of Rs.25,000/- which has been deposited in each of

these two appeals by the present appellant shall be transmitted to the Tribunal and thereupon such amount shall be included for the purpose of the disbursement as indicated above.

Both these appeals are partly allowed as indicated above. No order as to costs.

(M.R.Callan, J) (D.A.Mehta,J)

m.m.bhatt